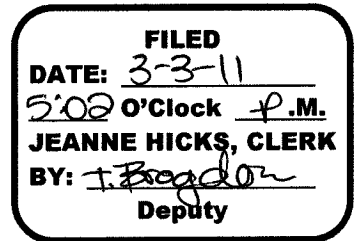


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: T. Brogdon, Deputy Clerk

CASE NO. V1300CR201080049

DATE: March 3, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney
Sheila Polk/Bill Hughes,
(via OnBase)
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly,
(via electronic mail)
(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP,
(via electronic mail)
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 9

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 9:59 a.m.

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Co-Counsel for Defendant
Luis Li, Co-Counsel for Defendant
Truc Do, Co-Counsel for Defendant
Miriam Seifter, Co-Counsel for Defendant
Victim Services Representative

State's Counsel, Detective Ross Diskin, Counsels for Defendant, Defendant and Victim Witness Advocate are present in the Courtroom.

Defense Counsel requests that questions be directed toward personal observations of a witness without leading them into drawing conclusions as to the medical condition of other participants. Discussion ensues.

Court addresses the importance of foundation during questioning.

Counsel for State requests Defense Counsel's PowerPoint presentation of their opening statement be submitted for the record and not admitted into evidence, for purposes of appeal. Discussion ensues.

IT IS ORDERED the audible portion of the opening statement shall be of record.

Defense Counsel requests Counsel for State introduce their various PowerPoint presentations as an Exhibit.

IT IS ORDERED Counsel for State shall submit their PowerPoint presentations as an Exhibit.

Court addresses correspondence received regarding copyright issues. Court advises this document has not been reviewed by the Court and understands the parties have received a copy.

~~~Recess~~~

At 10:19 a.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips having been previously sworn resumes testimony.

Exhibits 148, 203 and 204 are admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Melissa Phillips continues testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Melissa Phillips continues testimony.

The Jury is reminded of the admonition and is excused for a recess.

~~~Recess~~~

At 11:37 a.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips resumes testimony.

Melissa Phillips is reminded of the Rule for the exclusion of witnesses and is excused for a recess. Melissa Phillips exits the Courtroom.

Court addresses the Jury regarding communications during Trial. The Jury is reminded of the admonition and excused for the noon recess.

Court and Counsel discuss audio tapes and transcripts. Counsel for State requests Defense Counsel follow rules and allow the witness to admit or deny during testimony. Discussion of audio tapes and transcripts ensues.

Court directs Counsel to review and proceed as contemplated by Rule 613.

~~~Lunch Recess~~~

At 1:27 p.m. Court reconvenes, all previously appearing parties are present in the Courtroom. The Jury is not present.

Court and Counsel discuss basic 613 and 801 law, and transcripts submitted by Defense Counsel. Discussion ensues.

Court advises if Counsel believe there is inaccuracy within a transcript, it shall be addressed on redirect. Court expects the rules to be followed.

~~~Recess~~~

At 1:40 p.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips resumes testimony.

Exhibits 138 and 321 are offered and admitted into evidence without objection.

Exhibits 322, 325, 505, 511, and 528 are admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition and excused for a recess.

Melissa Phillips is reminded of the Rule for the exclusion of witnesses and is excused for a recess.

~~~Recess~~~

At 3:18 p.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Questions for the witness are submitted by the Jury and discussed at sidebar out of the presence of the Jury on the record.

Witness Melissa Phillips is asked and answers questions #1 and #3 submitted by the Jury.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Melissa Phillips is reminded of the Rule for the exclusion of witnesses, is excused and exits the Courtroom.

Jennifer Haley is sworn and testifies.

Court reminds Jennifer Haley of the Rule for the exclusion of witnesses and is excused for the evening recess.

The Jury is reminded of the admonition, advised to return on March 4, 2011 at 9:15 a.m. and excused for the evening recess.

The Jury and Jennifer Haley exit the Courtroom.

Court advises of media requests for admitted exhibits. Court requests Counsel consider providing a witness list to media for purposes of planning. A request has been made through Court Administration that media representatives let Counsel know if there is a particular interest.

Defense Counsel advises a CD was provided by Counsel for State during recess and marked as exhibit 735 to be played during Jennifer Haley's testimony. Defense Counsel advises after review, the CD is an exact excerpt the Court ruled as inadmissible. Oral argument regarding hearsay ensues. Court advises if it is not being offered for the truth, it is important to let the Jury know.

Counsel for State advises the contents of the CD are relevant for purposes to show the victim's state of mind and determination, and to what Defendant knows about this person who is the victim in the manslaughter charge.

Court addresses the rule regarding hearsay and advises there is always an exception and it isn't hearsay if it is not offered for the truth. The Court advises the way it has been described by Counsel for the State, it fits under 8033 as it would be coming in for the truth of what's remembered. With regard to the second aspect, there would be a legitimate reason to offer the evidence and it would take limiting instruction to know it could only be considered with regard to Mr. Ray's state of mind. Court advises this issue will be addressed with further argument prior to Trial on March 4, 2011.

Court stands adjourned for the day.

**END TIME: 5:02 p.m.**

cc. Gallagher & Kennedy, P C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde